

By Senator Burgess

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1 A bill to be entitled
2 An act relating to water quality enhancement areas;
3 creating s. 373.4134, F.S.; providing legislative
4 findings and intent; defining terms; providing for
5 water quality enhancement areas, enhancement service
6 areas, and enhancement credits; providing requirements
7 for water quality enhancement area permits,
8 enhancement service areas, and enhancement credits;
9 directing the Department of Environmental Protection
10 and water management districts to authorize the sale
11 and use of enhancement credits to offset certain
12 adverse water quality impacts and to meet certain
13 water quality requirements; providing construction;
14 directing the department to maintain enhancement
15 credit ledgers and adopt rules; providing an effective
16 date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Section 373.4134, Florida Statutes, is created
21 to read:

22 373.4134 Water quality enhancement areas.-

23 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
24 that:

25 (a) Water quality will be improved and adverse water
26 quality impacts of activities regulated under this part may be
27 offset by the construction, operation, maintenance, and long-
28 term management of water quality enhancement areas that provide
29 offsite compensatory treatment.

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30 (b) An expansion of existing authority for regional
31 treatment to include offsite compensatory treatment in water
32 quality enhancement areas to make credits available for purchase
33 to offset impacts regulated under this part, is needed.

34 (c) The construction, operation, maintenance, and long-term
35 management of water quality enhancement areas pursuant to this
36 section will improve the certainty and long-term viability of
37 water quality treatment systems.

38 (d) Water quality enhancement areas are a valuable tool to
39 assist applicants in satisfying the net improvement performance
40 standard pursuant to s. 373.414(1)(b)3. to ensure significant
41 reductions of pollutant loadings.

42 (e) Water quality enhancement areas that provide water
43 quality enhancement credits to applicants seeking permits under
44 this part and entities seeking to meet an assigned basin
45 management action plan allocation or reasonable assurance plan
46 pursuant to s. 403.067 are considered an appropriate and
47 permissible option.

48 (2) DEFINITIONS.—As used in this section, the term:

49 (a) "Enhancement credit" means a standard unit of measure
50 which represents a quantity of pollutant removed.

51 (b) "Enhancement service area" means the geographic area
52 where the water quality enhancement area can reasonably be
53 expected to offset adverse water quality impacts.

54 (c) "Planning unit" means the total maximum daily load
55 planning unit that is an individual tributary basin or a group
56 of smaller adjacent tributary basins with similar
57 characteristics.

58 (d) "Water quality enhancement area" means a natural system

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59 constructed, operated, managed, and maintained pursuant to a
60 permit issued under this part for the purpose of providing
61 offsite, compensatory, regional treatment within an identified
62 enhancement service area, for which enhancement credits may be
63 provided.

64 (e) "Water quality enhancement area permit" means a permit
65 issued for a water quality enhancement area which authorizes the
66 construction, operation, management, and maintenance of the area
67 and the purchase and sale of enhancement credits.

68 (3) WATER QUALITY ENHANCEMENT AREAS.-

69 (a) An environmental resource permit issued by the
70 department under this part must authorize the construction,
71 operation, management, and maintenance of a water quality
72 enhancement area. Department rules pertaining to environmental
73 resource permits apply to water quality enhancement areas and
74 enhancement credits.

75 (b) A water quality enhancement area must address
76 contributions of pollutants for those parameters in an
77 enhancement service area which do not meet state water quality
78 standards.

79 (c) A water quality enhancement area must use, create, or
80 improve natural systems in order to improve water quality.

81 (d) A water quality enhancement area may not provide
82 credits to compensate for wetland or other surface water
83 impacts.

84 (e) A governmental entity may use a water quality
85 enhancement area for its own water quality needs. However, a
86 governmental entity may not act as a sponsor to construct,
87 operate, manage, maintain, or market enhancement credits to

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88 third parties.

89 (f) A local government may not require a permit or
90 otherwise impose regulations governing the operation of a water
91 quality enhancement area.

92 (4) WATER QUALITY ENHANCEMENT AREA PERMIT.-

93 (a) To obtain a water quality enhancement area permit, the
94 applicant must provide reasonable assurances that the proposed
95 water quality enhancement area will:

96 1. Meet the requirements for issuance of an environmental
97 resource permit.

98 2. Benefit water quality in the enhancement service area.

99 3. Achieve defined performance or success criteria for the
100 reduction of pollutants or other constituents that prevent
101 receiving waters from meeting state water quality standards.

102 4. Assure long-term pollutant reduction through effective
103 operation and maintenance in perpetuity by designation of a
104 responsible long-term maintenance entity supported by an
105 endowment or other long-term financial assurance sufficient to
106 assure perpetual maintenance.

107 5. Demonstrate sufficient legal or equitable interest in
108 the property to ensure access and perpetual protection and
109 management of the land within the water quality enhancement
110 area.

111 6. Provide for permanent preservation of the site pursuant
112 to s. 704.06.

113 (b) The water quality enhancement area permit must provide
114 for the assessment, valuation, and award of credits based on
115 units of pollutant removed. To assist the department in
116 determining enhancement credits, a water quality enhancement

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117 area application must include the following information:

118 1. Rainfall data over the longest period of record
119 available collected from the closest site to the proposed water
120 quality enhancement area, preferably within the same drainage
121 basin.

122 2. Anticipated average annual water quality and quantity
123 inflows to the proposed water quality enhancement area, based on
124 published local data collected over a period of record that most
125 closely matches the rainfall data under this paragraph.

126 3. Site-specific conditions affecting the anticipated
127 performance of the proposed water quality enhancement area,
128 including the proposed treatment type and anticipated associated
129 reduction rates, as demonstrated by the performance of other
130 areas where the treatment type has been established and
131 operating over a minimum of two consecutive wet and dry seasons.

132 4. Proposed data collection sites. An applicant may use
133 data collection stations approved in advance by the department
134 in sites that the department deems insufficient to determine
135 flows and local water quality conditions.

136 (c) The issuance of a water quality enhancement area permit
137 under this section does not preclude the responsibility of an
138 applicant to obtain other applicable federal, state, and local
139 permits for the construction activities associated with the
140 water quality enhancement area.

141 (5) ENHANCEMENT SERVICE AREA.—

142 (a) An enhancement service area must be based on a basin
143 management action plan or reasonable assurance plan boundary
144 adopted by the department. If the department does not adopt a
145 basin management action plan or reasonable assurance plan

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146 boundary, the enhancement service area must be the planning
147 unit.

148 (b) A water quality enhancement area may only provide
149 enhancement credits in an enhancement service area, except for:

150 1. Projects with adverse impacts located partially within
151 the enhancement service area.

152 2. Linear projects, such as roadways, transmission lines,
153 distribution lines, pipelines, railways, or seaports listed in
154 s. 311.09(1).

155 3. Projects with total adverse impacts of less than 1 acre
156 in size.

157 (c) Once an enhancement service area has been established
158 by the department, the enhancement service area must be accepted
159 by all water management districts and local governments.

160 (6) ENHANCEMENT CREDITS.—

161 (a) The department or water management district shall
162 authorize the sale and use of enhancement credits to offset
163 adverse water quality impacts of activities regulated under this
164 part or to assist entities seeking to meet an assigned basin
165 management action plan allocation or reasonable assurance plan
166 pursuant to s. 403.067.

167 (b) Water quality improvement projects using natural
168 systems or land use modifications, including, but not limited
169 to, constructed wetlands or minor impoundments that reduce
170 pollutants to a receiving water body, may be used by an
171 applicant to generate enhancement credits if approved by the
172 department.

173 (c) The department shall provide for and maintain a ledger
174 that tracks the award, release, and use of enhancement credits.

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175 1. The operator of a water quality enhancement area shall
176 notify the department of the amount of enhancement credits sold
177 or used within 30 days of the date the enhancement credit
178 transaction is completed.

179 2. A water management district that authorizes applicants
180 seeking permits under this part to use enhancement credits to
181 offset water quality impacts must report to the department the
182 amount of enhancement credits used by the applicant.

183 (d) Reductions in pollutant loading required under any
184 state regulatory program are not eligible to be considered as
185 enhancement credits.

186 (e) Enhancement credits may not be used by point source
187 dischargers to satisfy regulatory requirements other than those
188 necessary to obtain an environmental resource permit for
189 construction and operation of the surface water management
190 system of the site.

191 (f) Use of enhancement credits made available by water
192 quality enhancement areas is voluntary.

193 (g) Any landowner, discharger, or other responsible person
194 regulated under this part or s. 403.067 implementing applicable
195 management strategies specified in an adopted basin management
196 action plan or reasonable assurance plan may not be required by
197 any permit or other enforcement action to use enhancement
198 credits to reduce pollutant loads to achieve the pollutant
199 reductions established pursuant to s. 403.067.

200 (h) A local government may not deny the use of enhancement
201 credits due to the location of the water quality enhancement
202 area outside the jurisdiction of the local government.

203 (7) AUTHORITY.—The authority granted to the department

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204 under this section is supplemental to the authority granted
205 under s. 403.067(8).

206 (8) RULES.—The department shall adopt rules to implement
207 this section.

208 Section 2. This act shall take effect upon becoming a law.